



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2021-0249; FRL-8724-02-R9]

#### **Rescission of Clean Data Determination and Call for Attainment Plan Revision for the Yuma, AZ 1987 PM<sub>10</sub> Moderate Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to rescind its previously issued clean data determination (CDD) for the Yuma, Arizona “Moderate” nonattainment area (Yuma NAA) for the 1987 24-hour national ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>) because recent complete, quality-assured monitoring data show that the area has subsequently violated this NAAQS. We are also determining that the Arizona State Implementation Plan (SIP) is substantially inadequate to attain or maintain the PM<sub>10</sub> standard in the Yuma NAA and calling for Arizona to revise the SIP to address this inadequacy.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2021-0249. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If

you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** John J. Kelly, Air Planning Office (AIR-2), EPA Region IX, (415) 947-4151, [kelly.johnj@epa.gov](mailto:kelly.johnj@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

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### **I. Proposed Action and Re-opening of Comment Period**

On June 1, 2021, the EPA proposed to rescind our previously issued CDD for the Yuma NAA because recent complete, quality-assured monitoring data show that the area has subsequently violated the PM<sub>10</sub> NAAQS.<sup>1</sup> We also proposed to find that the Arizona SIP is substantially inadequate to attain or maintain the PM<sub>10</sub> standard and to issue a SIP call requiring Arizona to revise its existing SIP to address this inadequacy. In order to cure this deficiency, we proposed to require Arizona to submit a Moderate nonattainment plan SIP submission meeting applicable requirements for such a SIP submission within 18 months of finalizing the SIP call. We also proposed to set a new attainment date of no later than December 31, 2025, for the 1987 24-hour PM<sub>10</sub> NAAQS in this area because the original maximum statutory attainment date for this area under Clean Air Act (CAA or “Act”) section 188(c)(1) was December 31, 1994 (approximately four years from the original designation).<sup>2</sup> Finally, we proposed to reverse our previous finding that the motor vehicle emissions budgets in the Yuma PM<sub>10</sub> Maintenance Plan

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<sup>1</sup> 86 FR 29219.

<sup>2</sup> 86 FR 29221.

were adequate for transportation conformity purposes pursuant to 40 CFR 93.118(f)(1)(vi).

Please refer to our proposed rule for background information and additional explanation of the proposed actions.

The initial public comment period for the proposed rule started on June 1, 2021 and ended on July 1, 2021. Due to an inadvertent administrative oversight, the EPA did not post all the documents contained in the docket until June 23, 2021. On October 19, 2021, the EPA reopened the comment period for the proposed rule for an additional 30 days, to allow for a full comment period with access to all docket materials.<sup>3</sup> In response to a comment from the Arizona Department of Environmental Quality (ADEQ), we also sought public comment on whether we should set a maximum attainment date of December 31, 2027 (roughly six years from the expected SIP call effective date), rather than December 31, 2025 (roughly four years from the expected SIP call effective date), for the Yuma NAA, if we were to finalize our proposed finding of inadequacy and SIP call.

In addition to the two public comment periods described in the above paragraphs, the EPA also held a comment period that was announced on our Office of Transportation and Air Quality (OTAQ) website.<sup>4</sup> The purpose of this comment period was to invite public comment on our proposed reversal of our previous finding that the motor vehicle emissions budgets in the Yuma PM<sub>10</sub> Maintenance Plan were adequate for transportation conformity purposes pursuant to 40 CFR 93.118(f)(1)(vi). We posted our announcement of the public comment period on the OTAQ website on June 4, 2021, and requested comments be submitted by July 6, 2021. We also met with the Yuma Interagency Work Group on June 22, 2022, to inform them of this proposal.<sup>5</sup>

Finally, on October 21, 2021, EPA Region IX staff met with representatives of the Arizona Farm Bureau to discuss issues affecting the agricultural sector, including in the Yuma

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<sup>3</sup> 86 FR 57769.

<sup>4</sup> <https://www.epa.gov/state-and-local-transportation/adequacy-review-state-implementation-plan-sip-submissions-conformity>.

<sup>5</sup> Memorandum dated January 27, 2022, from John Kelly, EPA Region IX, Air and Radiation Division, to Docket ID No. EPA-R09-OAR-2021-0249.

## II. Public Comments and EPA Responses

We did not receive any comments during the comment period announced on our OTAQ website. During the two comment periods the EPA announced in the *Federal Register*, we received a total of 13 comment letters from the following parties: ADEQ, the Arizona Farm Bureau Federation, the Seed Trade Association of Arizona, the Wellton-Mohawk Natural Resource Conservation District, the Yuma County Department of Development Services, the Yuma County Farm Bureau, the Yuma Fresh Vegetable Association, the Yuma Natural Resource Conservation District, and the Laguna Natural Resource Conservation District. We summarize and respond to these comments below.

In addition, on October 5, 2021, Senators Kyrsten Sinema and Mark Kelly sent a letter to EPA Administrator Michael Regan regarding the proposed rule. The EPA's Acting Assistant Administrator for Air, Joe Goffman, responded to this letter on November 17, 2021. We have included the Senators' letter and the EPA's responses in the docket for this action.

*Comment 1:* Several commenters expressed opposition to the proposed CDD rescission and SIP call, arguing that the EPA and ADEQ should instead evaluate whether recent exceedances in the Yuma NAA qualify for exclusion under the EPA's Exceptional Events Rule (EER). The commenters noted that exceedances of the PM<sub>10</sub> NAAQS in the Yuma NAA are generally due to high wind events that could qualify as exceptional events (EEs). Some of the commenters also asserted that the EPA should develop and approve a new EER. Two commenters added that the CAA does not mandate that a SIP revision be developed prior to submission of an EE demonstration.

Two commenters quoted 40 CFR part 50 appendix K, section 2.4(a), which defines an EE as an uncontrollable event caused by natural sources of particulate matter or an event that is not

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<sup>6</sup> Memorandum dated December 1, 2021, from Cara Gillen, Agriculture Advisor, EPA Region IX, Air and Radiation Division, to Docket ID No. EPA-R09-OAR-2021-0249.

expected to recur at a given location and allows for the use of more than three years of representative data in calculating a PM<sub>10</sub> design value in order to reduce the effect of such events.

In addition, several commenters stated that, after many years of stakeholder meetings and studies by ADEQ and independent contractors, the sources of PM<sub>10</sub> dust in the Yuma NAA are well documented. They expressed opposition to any “reset” of this previous work. Commenters also pointed to controls that have already been implemented for specific sources of PM<sub>10</sub> in the Yuma NAA.

*Response 1:* We agree with commenters that exceedances of the 1987 24-hour PM<sub>10</sub> NAAQS in the Yuma NAA are often associated with high wind that could potentially qualify for treatment as natural events under the EPA’s EER. In order to qualify for such treatment, all the applicable criteria under the EER must be met, including a demonstration that reasonable control measures were applied at the time of the event.<sup>7</sup> Specifically, for a high wind dust event to qualify as a natural event, the state must show that the windblown dust is entirely from natural undisturbed lands in the area or that all anthropogenic sources are reasonably controlled.<sup>8</sup> We are not aware of any evidence to suggest that windblown dust in the Yuma NAA is entirely from natural undisturbed lands. Therefore, in order to meet this requirement, the state must provide evidence of the effective implementation and enforcement of SIP-approved or other enforceable controls on the anthropogenic sources within the state’s jurisdictional boundaries that cause or contribute to the monitored exceedance or violation.<sup>9</sup>

In a number of formal and informal communications over the last several years, the EPA has indicated to ADEQ that we believe the current controls on anthropogenic sources that contribute to the exceedances and are within the state’s jurisdiction do not fully meet the requirements for enforceable, reasonable controls under the EER. In 2015, based on identified

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<sup>7</sup> 40 CFR 50.14(b)(8)(iii).

<sup>8</sup> 40 CFR 50.14(b)(5)(ii).

<sup>9</sup> 40 CFR 50.14(b)(8)(vii) and (viii)(A)-(C).

deficiencies in existing controls for paved roads, we recommended that “ADEQ re-direct its efforts away from attempts to demonstrate past exceedances as exceptional events and towards developing a PM<sub>10</sub> State Implementation Plan pursuant to CAA §§ 110, 182 and 189.”<sup>10</sup>

However, due to the suspension of attainment-related requirements under the CDD, ADEQ was not required to develop such a plan. In the absence of such a requirement, ADEQ and the EPA have instead worked with stakeholders in the Yuma NAA for several years on the development of a “prospective assessment” of reasonable controls for the Yuma NAA.<sup>11</sup> As noted by commenters, through this process ADEQ and stakeholders have made significant progress in understanding the sources that contribute to exceedances of the PM<sub>10</sub> NAAQS in the Yuma NAA.

In 2020, ADEQ submitted a draft outline of a prospective assessment of controls on specific source sectors in the Yuma NAA. The EPA provided feedback on this draft, noting that it did not include any proposed new requirements to implement “reasonable controls” on several significant source categories in the area.<sup>12</sup> We explained that, under the EER, the EPA would not be able to concur on PM<sub>10</sub> exceptional events demonstrations in the Yuma NAA without the necessary enforceable and reasonable controls for all significant anthropogenic sources under the State’s jurisdiction.<sup>13</sup> Therefore, we indicated that it would be necessary for ADEQ to develop new or revised rules for these source categories before the EPA would be able to concur on exceptional events demonstrations for the Yuma NAA and ultimately redesignate the area to attainment.<sup>14</sup> Following these communications, ADEQ, the EPA, and stakeholders have continued to work on the development of new and revised rules for the affected source

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<sup>10</sup> Letter dated November 19, 2015, from Elizabeth Adams, Acting Director, Air Division, EPA Region IX, to Eric Massey, Air Quality Division Director, ADEQ, 3.

<sup>11</sup> See, e.g., email dated October 26, 2019, from Meredith Kurpius, EPA, to Tim Franquist, ADEQ, subject: “Yuma PM<sub>10</sub> EE process.”

<sup>12</sup> Letter dated September 10, 2020, from Elizabeth Adams, Director, Air and Radiation Division, EPA Region IX, to Misael Cabrera, Director, ADEQ.

<sup>13</sup> Id.

<sup>14</sup> Id.

categories.

However, to date, no governmental entity has adopted any new enforceable requirement to implement controls on any PM<sub>10</sub> sources in the Yuma NAA. While we appreciate the efforts of various parties to voluntarily implement control measures, such as street sweeping and agricultural dust controls, the implementation of such voluntary measures does not meet the CAA and EER requirements for enforceable control measures. In the absence of enforceable, reasonable controls measures for all significant anthropogenic sources under the State's jurisdiction, high wind events in the Yuma NAA would not qualify for treatment as EEs under the EER.

We recognize the commenters' frustration regarding the lack of progress toward redesignation of the Yuma NAA to attainment of the PM<sub>10</sub> NAAQS. However, we do not agree with the suggestion that rescission of the CDD and issuance of a SIP call constitutes a "reset" of the current process. On the contrary, by establishing firm deadlines by which enforceable control measures must be submitted to the EPA and implemented by the relevant sources, we believe this action may serve to expedite implementation of enforceable, reasonable controls, which is a prerequisite to the EPA's concurrence on EE demonstrations. We also note that the EPA is not permitted to approve a redesignation to attainment unless the EPA determines that "improvement in air quality is due to permanent and enforceable reductions in emissions," and that a plan demonstrating the area will continue to maintain the NAAQS is in place, among other requirements.<sup>15</sup>

With respect to the suggestion that the EPA develop a new EER, we note that the EER was last revised in 2016 and the EPA has concurred on EE demonstrations submitted by many states, including Arizona, under the provisions of the revised EER. The commenters did not indicate which aspect of the EER they believe should be revised, or why they believe the rule's current provisions are problematic. Regardless, any potential revision to the EER is outside the

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<sup>15</sup> CAA section 107(d)(3)(E).

scope of this current rulemaking.

If, by a “new EER,” commenters are referring to submittal of new EE demonstrations by ADEQ, we do not expect that we would be able to concur upon such demonstrations at this time due to the lack of enforceable, reasonable controls, as described in the preceding paragraphs. Furthermore, while we agree that the CAA does not require that a state develop a SIP submission before an EE demonstration, the EPA cannot concur on such a demonstration under the EER unless enforceable, reasonable controls are in place at the time of the event. Under the EER, the EPA considers enforceable control measures implemented in accordance with a SIP to be reasonable controls, if they were approved within five years of the event and address all sources necessary to fulfill the applicable CAA requirements for the SIP.<sup>16</sup> Therefore, a SIP submission including control measures to address the anthropogenic sources contributing to the monitored exceedance would help to ensure that the EER provisions were met for any future EE demonstrations for the relevant monitor and NAAQS.

Finally, we note that 40 CFR part 50 appendix K section 2.4(a) was promulgated in 1987 as part of the original implementing regulations for the 1987 PM<sub>10</sub> NAAQS.<sup>17</sup> It has not been revised since Congress amended the CAA to address EEs in CAA section 319 in 2005,<sup>18</sup> or since the EER was promulgated in 2007<sup>19</sup> and revised in 2016.<sup>20</sup> The EER includes a more detailed definition of an EE than the definition cited by the commenters. The EER definition specifies, among other things, that an EE must be “not reasonably controllable or preventable” and must “be determined by the Administrator in accordance with 40 CFR 50.14 to be an exceptional event.”<sup>21</sup> As described in the preceding paragraphs, we expect that we would not be able to concur on an EE demonstration for the Yuma NAA under 40 CFR 50.14 at this time due to a

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<sup>16</sup> 40 CFR 50.14(b)(8)(v).

<sup>17</sup> 52 FR 24634, 24667 (July 1, 1987).

<sup>18</sup> Pub. L. 109–59, title VI, §6013(a), August 10, 2005, 119 Stat. 1882 (codified in CAA section 319(b)).

<sup>19</sup> 72 FR 13560 (March 22, 2007).

<sup>20</sup> 81 FR 68216.

<sup>21</sup> 40 CFR 50.1(j).



lack of enforceable, reasonable controls on sources within the State's jurisdiction.

Furthermore, as noted in our proposal, the Yuma NAA has had a violating design value for the 1987 24-hour PM<sub>10</sub> NAAQS every year since 2006.<sup>22</sup> Therefore, even if we were to consider more than three years of representative data pursuant to 40 CFR part 50 appendix K section 2.4(a), the Yuma NAA would still be violating the PM<sub>10</sub> NAAQS.

*Comment 2:* A few commenters noted that much of the land in the Yuma NAA is owned by the federal government, the state government, or local tribes. They indicated that ADEQ cannot control sources of dust on these lands. Commenters also stated that uncontrolled dust enters the Yuma NAA from Mexico and Imperial County, California, which are outside of ADEQ's jurisdiction.

*Response 2:* We agree with the commenters' assertion that ADEQ does not have authority to regulate PM<sub>10</sub> emissions in Mexico or California, on any Indian reservation land, or in any other area where a tribe has jurisdiction. Under the EER, the State is not required to demonstrate that reasonable controls were in place for emissions-generating activity outside of the State's jurisdictional boundaries.<sup>23</sup> The CAA and the EPA's Tribal Authority Rule also contain provisions addressing emissions from sources on tribal land and other states and countries in relation to SIPs. This action will not affect or alter ADEQ's authorities or obligations with respect to such emissions outside of its jurisdiction.

We do not agree with the commenters' assertion that ADEQ lacks authority to regulate sources of emissions on state or federal government land. Under Arizona State law, rules adopted by ADEQ apply throughout the State.<sup>24</sup> Furthermore, under CAA section 118, federal agencies must comply with all federal, state, interstate, and local requirements concerning air pollution control, unless expressly exempted by the President.<sup>25</sup> Therefore, in the absence of a specific

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<sup>22</sup> 86 FR 29221 (citing EPA, Air Quality System (AQS) "Design Value Report," dated March 3, 2021.)

<sup>23</sup> 40 CFR 50.14(b)(8)(vii).

<sup>24</sup> ARS 49-106. Statewide application of rules.

<sup>25</sup> 42 U.S.C. 7418(a) and (b).

exemption, or an explicit preemption, air pollution control rules adopted by ADEQ apply to both governmental and nongovernmental entities.

*Comment 3:* One commenter expressed concern that data collected at the Yuma NAA monitoring station are not representative of ambient PM<sub>10</sub> concentrations in the Yuma NAA. The commenter pointed to differences in reported concentrations between the current and previous locations of the monitoring station and to localized dusty conditions near the current monitoring site.

*Response 3:* The commenter appears to be referring to the Yuma Supersite, which is the site of the only regulatory PM<sub>10</sub> monitor in the Yuma NAA. ADEQ's annual monitoring network plans provide information about the location and characteristics of this monitor.<sup>26</sup> As noted in our proposal, the EPA found that the 2018-2020 annual network plans (ANPs) submitted by ADEQ met the relevant PM<sub>10</sub> requirements under 40 CFR part 58.<sup>27</sup> We have also approved ADEQ's 2021 ANP with respect to these requirements.<sup>28</sup> These ANPs document that the monitoring objective of the Yuma Supersite PM<sub>10</sub> monitor is NAAQS comparison and its site type is population-oriented,<sup>29</sup> meaning that it is located to measure typical concentrations in areas of high population density.<sup>30</sup> Consistent with this objective and site type, the monitor is sited at the neighborhood scale,<sup>31</sup> meaning that it represents particulate matter concentrations, as well as land use and land surface characteristics, within an area of approximately a few kilometers.<sup>32</sup> ADEQ's selection of this monitoring site, and the EPA's approval of the ANPs including this site, document that the monitor is properly sited and the data is representative of ambient PM<sub>10</sub> levels in this area.

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<sup>26</sup> See, e.g., ADEQ 2020 Annual Network Plan, Appendix C, 15.

<sup>27</sup> 86 FR 29220.

<sup>28</sup> Letter dated October 29, 2021, from Gwen Yoshimura, Section Chief, Air Quality Analysis Office, EPA Region 9, to Daniel Czecholinski, Director, Air Quality Division, ADEQ.

<sup>29</sup> See, e.g., ADEQ 2020 Annual Network Plan, Appendix C, 15.

<sup>30</sup> 40 CFR part 58, Appendix D, section 1.1.1(b).

<sup>31</sup> See, e.g., ADEQ 2020 Annual Network Plan, Appendix C, 15.

<sup>32</sup> 40 CFR part 58, Appendix D, section 4.6(b)(3).

The fact that the current monitor may record higher concentrations of PM<sub>10</sub> than the previous monitor, which was located on the roof of the Yuma Courthouse,<sup>33</sup> does not suggest that the monitor is improperly sited, given its monitoring objective, site type, and scale of representativeness. We also note that, even before the State relocated the PM<sub>10</sub> monitor to the Yuma Supersite, the Yuma NAA had a violating design value every year between 2006 and 2010, based on monitoring data from the Courthouse monitor.<sup>34</sup> Therefore, we do not agree with the commenter's suggestion that data from the Yuma Supersite may be unrepresentative of ambient PM<sub>10</sub> concentrations in the Yuma NAA.

*Comment 4:* One commenter asserted that, in proposing to rescind the CDD and issue a SIP call, the EPA failed to consider the cost and effectiveness of additional regulation that this action will impose on the local economy. The commenter also stated that it supports affordable effective measures that significantly reduce PM<sub>10</sub>, but not “measures put in place for regulatory purposes only; measures that are not effective, cannot be proven to work or only address an insignificant portion of PM<sub>10</sub>.”

*Response 4:* We disagree with the commenter that the EPA should consider costs prior to finalizing this action. The EPA interprets the CAA's nonattainment planning requirements as permitting the Agency to issue a CDD, which suspend a state's requirement to submit certain attainment planning requirements for as long as an area is attaining the NAAQS. In this case, the area is factually no longer attaining the NAAQS, and it is therefore not reasonable to interpret the Act as permitting the suspension of mandatory nonattainment area plan requirements applicable to the State to provide for the attainment of the PM<sub>10</sub> NAAQS in this area. We therefore do not agree with the commenter that the EPA may consider cost or effectiveness of regulation in rescinding the CDD, where the area is no longer attaining the NAAQS.

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<sup>33</sup> See, e.g., ADEQ 2009 Annual Network Plan, 122.

<sup>34</sup> EPA, AQS “Design Value Report,” dated March 26, 2021.

Further, the rescission of the CDD and issuance of a SIP call does not in and of itself impose any new costs or establish any new control measures. ADEQ will determine how to revise its SIP to meet Moderate area nonattainment plan requirements in response to the SIP call. The applicable requirements for a Moderate PM<sub>10</sub> NAA include implementation of reasonably available control measures (RACM) and reasonably available control technology (RACT) for sources of PM<sub>10</sub> and any necessary PM<sub>10</sub> precursors.<sup>35</sup> The EPA interprets the PM<sub>10</sub> RACM requirement to allow states to exclude de minimis source categories, and to consider both technological feasibility and the cost of control in determining which control measures are reasonably available, subject to the overarching requirement to provide for attainment of the NAAQS in the area.<sup>36</sup> Therefore it would be inappropriate and premature for the EPA to analyze the potential costs of controls prior to ADEQ's development of a SIP submission.

*Comment 5:* One commenter asserted that if the monitoring station measurements continue to increase due to naturally occurring PM<sub>10</sub> or unrepresentative, localized dusty conditions near the station, there is the potential for ever-changing controls such as contingency measures, findings of SIP inadequacy, or changes in designation.

*Response 5:* Please refer to Response 3 concerning the representativeness of the Yuma Supersite PM<sub>10</sub> monitor. With respect to potential increases in “naturally occurring” PM<sub>10</sub>, as discussed in Response 1, for a high wind dust event to qualify as a natural event, the State must show that the windblown dust is entirely from natural undisturbed lands in the area or that all anthropogenic sources are reasonably controlled.

Concerning contingency measures, we note that such measures are a required element of a Moderate area nonattainment plan that the State must submit.<sup>37</sup> However, such contingency measures would only be triggered if the EPA finds that the area failed to make reasonable further progress or to attain the NAAQS by the new attainment date. Prior to making a finding of failure

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<sup>35</sup> CAA sections 172(c)(1) and 189(a)(1)(C).

<sup>36</sup> See, e.g., General Preamble, 57 FR 13498, 13540–13541 (April 16, 1992).

<sup>37</sup> CAA section 172(c)(9).

to attain, we would consider any EE demonstrations submitted by ADEQ under the criteria set forth in the EER. If the State has met the criteria for exceptional events, including the requirement for reasonable controls on anthropogenic sources, then the EPA would be able to concur upon the demonstrations and exclude the relevant data.

With respect to a finding of SIP substantial inadequacy, we are determining that the Arizona SIP is substantially inadequate to attain the PM<sub>10</sub> NAAQS in the Yuma NAA. This determination is based on 15 years of monitoring data showing violations of the PM<sub>10</sub> NAAQS, rather than any short-term or temporary increase in PM<sub>10</sub> concentrations. To the extent that there could be a future finding of substantial inadequacy in the Arizona SIP, that would be for the EPA to determine based on its assessment of the relevant facts at such time, not in this action. Section 110(k)(5) explicitly provides that the EPA may elect to issue a SIP call “whenever” it determines that a state’s existing SIP has substantial inadequacy.

Regarding the commenter’s concerns about the Yuma NAA designation changing, the Yuma NAA is already designated nonattainment. That designation is not changing in this action. Any future change in designation for this area for purposes of the 1987 PM<sub>10</sub> NAAQS would be a redesignation from nonattainment to attainment. In order to redesignate the area to attainment, the EPA would have to determine, among other things, that the area had attained the PM<sub>10</sub> NAAQS due to reductions in emissions resulting from permanent and enforceable control measures.<sup>38</sup> To the extent that the commenter is concerned about the potential for changes in designation in general, this is a feature of the CAA. Pursuant to section 107(d)(3) either the State or the EPA can initiate a change in designation through the proper process when the facts justify such a change.

Finally, if by “designation” the commenter intended to say “classification,” the EPA agrees that further controls could be required should the area fail to meet its new Moderate area attainment date. Such failure could lead to a reclassification to Serious nonattainment. This

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<sup>38</sup> CAA section 107(d)(3)(E)(iii).

reclassification would require the state to meet additional more stringent Serious area requirements. Again, prior to making a determination that the area failed to attain by the applicable attainment date, we would consider any EE demonstrations submitted by ADEQ under the criteria set forth in the EER.

*Comment 6:* Three commenters recommended that, concurrent with review of potential EEs, ADEQ develop and submit to the EPA a SIP revision in case there are not enough qualifying EER events to put the Yuma NAA back into compliance. They stated that they did not want a repeat of the August 2006 Yuma SIP that was submitted and recalled by ADEQ.

*Response 6:* This final SIP call will require ADEQ to submit a SIP revision, which, as discussed in Response 1, may also help ADEQ to meet the requirement for reasonable controls under the EER. We interpret the commenters' reference to the "August 2006 Yuma SIP" to mean the "Yuma Maintenance Plan" submitted by ADEQ on August 17, 2006 (Yuma Maintenance Plan). We note that ADEQ has not withdrawn this SIP revision and the EPA has not taken action to approve or disapprove this SIP revision at this time. The EPA did find the motor vehicle emissions budgets in the Yuma Maintenance Plan adequate for transportation conformity purposes,<sup>39</sup> but, as discussed in Section IV of this document, we are now reversing that finding.

*Comment 7:* Two commenters expressed support for a maximum attainment date of December 31, 2027, rather than the December 31, 2025 date proposed by the EPA. Both commenters asserted that a period of approximately six years was necessary to fully implement control measures in the area in time to achieve three years of clean data prior to the attainment date. One commenter elaborated on the statutory basis for such a deadline, noting that CAA section 188(c)(1) establishes two alternative attainment deadlines for Moderate PM<sub>10</sub> nonattainment areas: four years after designation for areas designated in 1990, and six years after designation for all other areas. The commenter asserted that the CAA does not require the EPA to set the new maximum attainment date according to the shorter deadline and that the six-year

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<sup>39</sup> 72 FR 32295 (June 12, 2007).

deadline would be more appropriate for the Yuma NAA. The commenter then provided additional background concerning the history of the EPA's PM<sub>10</sub> nonattainment requirements and noted that the four-year deadline for areas designated under CAA 107(d)(4) was specifically designed for areas that had been required to submit SIPs containing attainment demonstrations prior to enactment of the CAA Amendments of 1990. The commenter argued that application of this deadline to areas subject to subsequent SIP calls requiring submission of a new attainment demonstration would be inappropriate and that such areas should be given the normal six years to attain.

*Response 7:* We agree with the commenters that an attainment date of as expeditiously as possible, but not later than December 31, 2027, is appropriate for the Yuma NAA. Because the original attainment date of December 31, 1994, has elapsed, CAA section 110(k)(5) provides the EPA with discretion to adjust this date “as appropriate.” We proposed a maximum attainment date of December 31, 2025 (approximately four years from our expected final action) because the Yuma NAA's original maximum attainment date was approximately four years from its designation as a NAA in 1990. However, as noted by one of the commenters, the December 31, 1994 date applied only to areas that were designated nonattainment under CAA section 107(d)(4), i.e. those areas that had either been identified as “Group I areas” because they had a high probability of violating the NAAQS, or that had, in fact, violated the NAAQS prior to January 1, 1989. Most of these areas, including the Yuma NAA, which had been identified as a Group I area,<sup>40</sup> were already required to have submitted attainment demonstrations.<sup>41</sup> In contrast, for newly designated NAAs which were not previously required to submit a nonattainment plan for the 1987 PM<sub>10</sub> NAAQS, CAA section 188(c)(1) set a maximum attainment date of “as expeditiously as practicable but no later than the end of the sixth calendar year after the area's

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<sup>40</sup> 52 FR 29383 (August 7, 1987).

<sup>41</sup> See 52 FR 24672, 24681 (July 1, 1987) (Group I SIPs “will have to contain full PM<sub>10</sub> control strategies including a demonstration of attainment . . .” and Group II SIPs must include an enforceable commitment to “adopt and submit to EPA a PM<sub>10</sub> control strategy that assures attainment. . .”)

designation as nonattainment.” The EPA acknowledges, as noted by the commenter, that areas such as Yuma that were designated nonattainment prior to 1990 would therefore have had a shorter maximum period of time to attain the NAAQS, i.e., only four years from the enactment of section 188(c) to 1994, whereas newly designated areas would have a maximum outer attainment date of six years.

In this action, however, the EPA must determine an appropriate new attainment date, as contemplated in CAA section 110(k)(5), due to the passage of time since the nonattainment designation of the Yuma NAA and intervening events. Because the 2006 CDD suspended the obligation for development and submittal of an attainment demonstration, the Yuma NAA is in a different position now than it was in 1990, when an attainment demonstration had already been required for the area. Therefore, after consideration of comments on this issue, we agree that an attainment date of as expeditiously as practicable but no later than December 31, 2025, is not appropriate for the Yuma NAA. We also note that, if we were newly designating the Yuma NAA as nonattainment for this NAAQS, the maximum attainment date would be December 31, 2028 (i.e., the end of the sixth calendar year after the area's designation as nonattainment). However, given that the area has been designated nonattainment for more than thirty years and ADEQ has already undertaken substantial work to characterize the sources contributing to nonattainment in the Yuma NAA and to develop rules to regulate sources within its jurisdiction, we do not consider it appropriate to provide six full calendar years before the maximum attainment date.

In determining the “appropriate” attainment date for the Yuma NAA under CAA section 110(k)(5), we have considered both the provisions of 188(c)(1) (described above) and the provisions of CAA section 172(a)(2)(A), which sets attainment dates for all nonattainment areas, except those for which attainment dates are specifically provided under other provisions of title I, part D.<sup>42</sup> In particular, section 172(a)(2)(A) provides a default attainment date of as expeditiously as practicable, but no later than five years from the nonattainment designation, but permits the

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<sup>42</sup> CAA section 172(a)(2)(D).



EPA to extend this date, as appropriate, up to 10 years from the date of designation as nonattainment, considering the severity of nonattainment and the availability and feasibility of pollution control measures.

Although these provisions of section 172(a)(2)(A) would normally be superseded by 188(c)(1) for newly designated PM<sub>10</sub> NAAs, in this instance the maximum statutory attainment dates of section 188(c)(1) for the Yuma NAA have long since passed. In such circumstances, the EPA considers it reasonable to look to section 172(a)(2)(A) for relevant guideposts, along with 188(c)(1), in setting an appropriate maximum attainment deadline under 110(k)(5) for the Yuma NAA, as if the area were newly nonattainment. Because the Yuma NAA remains classified as Moderate and because additional controls for the Yuma NAA are clearly available and feasible, we do not believe a lengthy extension (i.e., a year or more) beyond the five-year deadline set forth in section 172(a)(2)(A) is appropriate. However, we find that an extension of several months beyond the five-year default maximum attainment date is appropriate in order to align the maximum attainment date with the end of the calendar year, consistent with end-of-year attainment dates specified for PM<sub>10</sub> in CAA section 188(c)(1). In this case, the triggering action for the new attainment plan requirements is the final CDD rescission and SIP call, rather than the initial designation of the area as nonattainment. The final effective date for these actions is **[Insert date 30 days after date of publication in the *Federal Register*]**. Therefore, we are finalizing a maximum attainment date of December 31, 2027, for the Yuma NAA pursuant to CAA section 110(k)(5).

### **III. Environmental Justice Assessment**

To identify environmental burdens and susceptible populations in underserved communities in the Yuma NAA, and to examine the implications of our proposed action on these communities, we performed a screening-level analysis using the EPA's environmental justice

(EJ) screening and mapping tool (“EJSCREEN”).<sup>43</sup> Our screening-level analysis included multiple environmental and demographic indicators, including the EJSCREEN “Demographic Index,” which is the average of an area’s percent minority and percent low income populations, i.e., the two demographic indicators explicitly named in Executive Order 12898. The Demographic Index for the Yuma NAA exceeds the 75<sup>th</sup> percentile, compared to the United States as a whole.<sup>44</sup>

As discussed in the EPA’s EJ technical guidance, people of color and low-income populations often experience greater exposure and disease burdens than the general population, which can increase their susceptibility to adverse health effects from environmental stressors.<sup>45</sup> Underserved communities can also experience reduced access to health care, nutritional, and fitness resources, further increasing their susceptibility.

This final action requires the State of Arizona to submit to the EPA a SIP revision providing for attainment of the 1987 24-hour PM<sub>10</sub> NAAQS in the Yuma NAA. The development of required SIP elements will result in air quality improvements and human health benefits for all Yuma NAA residents, including those in underserved communities. Conversely, failure to make the determinations in this final action could inhibit or delay the attainment of the 1987 24-hour PM<sub>10</sub> NAAQS in the Yuma NAA, which could negatively impact health effects for all Yuma NAA residents and could perpetuate the EJ concerns potentially faced by communities in these areas, including Cocopah and Fort Yuma (Quechan) tribes, which have lands within the

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<sup>43</sup> EJSCREEN provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN is available at <https://www.epa.gov/ejscreen/what-ejscreen>. The EPA used EJSCREEN to obtain environmental and demographic indicators and EJ Indexes representing the Yuma NAA. Our analysis is included in the file titled “Environmental Justice in Yuma 1987 PM10 Nonattainment Area.pdf,” available in the rulemaking docket for this action.

<sup>44</sup> EJSCREEN reports environmental indicators (e.g., air toxics cancer risk, lead paint exposure, and traffic proximity and volume) and demographic indicators (e.g., people of color, low income, and linguistically isolated populations). Depending on the indicator, a community that scores highly for an indicator may have a higher percentage of its population within a demographic group or a higher average exposure or proximity to an environmental health hazard compared to the state, region, or national average. EJSCREEN also reports EJ indexes, which are combinations of a single environmental indicator with the EJSCREEN Demographic Index. For additional information about environmental and demographic indicators and EJ indexes reported by EJSCREEN, see EPA, “EJSCREEN Environmental Justice Mapping and Screening Tool – EJSCREEN Technical Documentation,” section 2 (September 2019).

<sup>45</sup> EPA, “Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,” section 4 (June 2016).

Yuma NAA. Thus, we believe that finalizing our proposed action will help to reduce disproportionate health, environmental, economic, and climate impacts on disadvantaged communities in the Yuma NAA and that this action will not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898.

#### **IV. Final Action**

The EPA has evaluated the comments on the proposed action. We have also reviewed the most recent monitoring data from the Yuma Supersite PM<sub>10</sub> monitor. Based on certified data from 2020, the monitor had a 2018-2020 design value of 5.4.<sup>46</sup> Based on preliminary data from 2021, the monitor had a 2019-2021 design value of 2.7.<sup>47</sup> These design values show continued violations of the 1987 24-hour PM<sub>10</sub> NAAQS and are therefore consistent with our proposed actions. Taking into consideration these data, and for the reasons described in the proposal and in our responses to comments in section II of this document, we conclude that it is appropriate to finalize the proposed CDD rescission and SIP call. Therefore, we are finalizing the rescission of the 2006 CDD for the Yuma NAA and reinstating the requirements that were suspended under that CDD.

We are also finding, pursuant to CAA section 110(k)(5), that the Arizona SIP is substantially inadequate to attain or maintain the 1987 24-hour PM<sub>10</sub> NAAQS in the Yuma NAA. In order to address this inadequacy, we are issuing a SIP call under CAA section 110(k)(5), requiring the State to submit a SIP revision meeting the applicable nonattainment plan requirements of the CAA for Moderate PM<sub>10</sub> NAAs.<sup>48</sup> These requirements include: (i) an approved permit program for construction of new and modified major stationary sources;<sup>49</sup> (ii) a

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<sup>46</sup> EPA, AQS, 2020 “Design Value Report,” dated January 26, 2022.

<sup>47</sup> EPA, AQS, 2021 preliminary “Design Value Report,” dated January 26, 2022.

<sup>48</sup> See CAA section 110(k)(5) (“Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made . . .”)

<sup>49</sup> CAA section 189(a)(1)(A). On November 2, 2015, the EPA published a final limited approval and limited

demonstration that the plan provides for attainment by no later than the applicable Moderate area attainment date or a demonstration that attainment by that date is impracticable;<sup>50</sup> (iii) provisions for the implementation of RACM and RACT;<sup>51</sup> (iv) quantitative milestones that will be used to evaluate compliance with the requirement to demonstrate reasonable further progress (RFP);<sup>52</sup> (v) evaluation and regulation of PM<sub>10</sub> precursors;<sup>53</sup> (vi) a description of the expected annual incremental reductions in emissions that will demonstrate RFP;<sup>54</sup> (vii) emissions inventories, as necessary;<sup>55</sup> (viii) other control measures (besides RACM and RACT) as may be needed for attainment;<sup>56</sup> (ix) contingency measures,<sup>57</sup> and (x) a motor vehicle emissions budget for the purpose of determining the conformity of transportation programs and plans developed by the metropolitan planning organization for the area.<sup>58</sup> The EPA's longstanding guidance on these statutory requirements is embodied in the "The General Preamble for Implementation of Title I of the Clean Air Act (CAA) Amendments."<sup>59</sup>

We are requiring Arizona to submit this Moderate nonattainment plan SIP submission within 18 months of the effective date of this final action. We are establishing an attainment date for the 1987 PM<sub>10</sub> NAAQS in the Yuma NAA of as expeditiously as practicable but no later than December 31, 2027. Consistent with this attainment date, implementation of RACM/RACT will be required no later than January 1, 2027. Furthermore, as discussed in Response 1, in order for exceedances associated with high wind events to qualify for exclusion under the EER, the state

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disapproval of revisions to ADEQ's new source review permitting rules. 80 FR 67319. On May 4, 2018, the EPA approved additional rule revisions to address many of the deficiencies identified in the 2015 action. 83 FR 19631. Accordingly, we do not expect that any revisions to ADEQ's permit program would be necessary to address this requirement.

<sup>50</sup> CAA section 189(a)(1)(B).

<sup>51</sup> CAA sections 172(c)(1) and 189(a)(1)(C).

<sup>52</sup> CAA section 189(c). Consistent with the General Preamble, 57 FR 13539, the starting point for counting the three-year periods in 189(c)(1) will be the due date for the SIP submittal, i.e., 18 months from this final action.

<sup>53</sup> CAA section 189(e).

<sup>54</sup> CAA section 172(c)(2).

<sup>55</sup> CAA section 172(c)(3).

<sup>56</sup> CAA section 172(c)(6).

<sup>57</sup> CAA section 172(c)(9).

<sup>58</sup> 40 CFR 93.102(b)(1).

<sup>59</sup> 57 FR 13498 (April 16, 1992).

must provide evidence of the effective implementation and enforcement of SIP-approved or other enforceable controls on the anthropogenic sources within the State's jurisdictional boundaries that cause or contribute to the monitored exceedance or violation. Given the prevalence of high wind events in the Yuma NAA and the fact that PM<sub>10</sub> design values are based on three years of ambient monitoring data, we expect that ADEQ would need to require implementation of reasonable controls on these sources no later than January 1, 2025, in order for the Yuma NAA to attain the PM<sub>10</sub> NAAQS by December 31, 2027.

Finally, we are reversing our previous adequacy finding for the motor vehicle emissions budgets in the Yuma Maintenance Plan to a finding of inadequacy pursuant to 40 CFR 93.118(f)(1)(vi). This reversal will require transportation agencies to determine conformity using interim emission tests pursuant to 40 CFR 93.119, instead of the current practice of using the past maintenance plan motor vehicle emissions budgets as part of a budget test.

## **V. Statutory and Executive Order Reviews**

This action is a determination that the Yuma NAA is no longer attaining the 1987 PM<sub>10</sub> NAAQS, based on the EPA's review of air quality data, and a SIP call under section 110(k)(5) of the CAA. Upon a finding that a SIP is deficient, section 110(k)(5) of the CAA directs the Agency to require the state to correct the deficiency. Therefore, this action does not impose additional requirements beyond those required by the CAA itself. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small

governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Will not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994) and discussed in Section III of this document.

In addition, this action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian tribes and thus this action will not impose substantial direct costs on tribal governments or preempt tribal law. Nonetheless, the EPA intends to notify the Cocopah and Fort Yuma (Quechan) tribes, which have lands within the Yuma NAA and were identified in our EJ screening analysis noted in Section III of this document.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

- Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the *Federal Register*]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: May 5, 2022.

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*

For the reasons stated in the preamble, the EPA amends chapter I, title 40 of the Code of Federal Regulations as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart D – Arizona**

2. Section 52.126 is amended by adding paragraph (d) to read as follows:

#### **§ 52.126 Control strategy and regulations: Particulate matter.**

\* \* \* \* \*

(d) Pursuant to CAA section 110(k)(5), the State of Arizona is required to submit a revision to the Arizona SIP for the Yuma PM<sub>10</sub> nonattainment area (NAA) to the EPA by November 17, 2023. The SIP revision must, among other elements, provide for attainment of the 24-hour PM<sub>10</sub> NAAQS in the Yuma NAA as expeditiously as practicable but no later than December 31, 2027.

[FR Doc. 2022-10060 Filed: 5/16/2022 8:45 am; Publication Date: 5/17/2022]